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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,495	03/30/2004	Aaron Chapman	1050/128	3236
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EXAMINER				
DIXON, ANNETTE FREDRICKA				
ART UNIT		PAPER NUMBER		
3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,495

Applicant(s)

CHAPMAN ET AL.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. This Office Action is in response to the request for consideration filed on December 29, 2008. Examiner acknowledges claims 21-34 are pending in this application, with claims 21, 23, and 24 having been currently amended, and claims 1-20 having been cancelled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-26, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feathers (4,377,163) in view of Olivia (5,540,368).

As to Claim 21, Feathers discloses a harness (1) for use with breathing equipment, the harness (1) comprising at least one shoulder support panel (4), and a belt portion (3), the belt portion (3) comprising attachment means (Figure 2) for attaching a cylinder of breathable gas (2, Column 2, Lines 57-58) to the belt portion (3). Yet, Feathers does not expressly disclose the specific features of the mounting means and retaining means. However, at the time the invention was made the specific features of the mounting means and the retaining means were known. Particularly, Olivia teaches a holster (10) where the object (60, for example: a cylinder) is retained on the belt (70) via the engagement and disengagement of the male and female

adapters (28 and 22), where the male adapter (28) engages around the object (60, for example: a cylinder), and the object (60, for example: a cylinder) is further secured by a retaining strap (50) to provide additional securement to the object (60, for example: a cylinder) for the purpose of securing and immobilizing the movement of the object (60, for example: a cylinder) attached to the belt (70). (Column 5, Lines 25-45; Column 7, Lines 4-13; and Column 8, Lines 29-34). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Feathers to include the specific mounting means and retaining means as taught by Olivia for the purpose of providing immobilization to the object.

As to Claims 22-24, the system of Feathers/ Olivia discloses a mounting means; yet, does not expressly disclose the flexible nature of the mounting plate and the ability of the mounting plate to be molded of plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mounting plate out of a molded plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Furthermore, it should be noted that the portion of the recitation that claims the mounting plate be molded is directed to a process. Since the claims are apparatus/product claims, patentable weight is only given to the end product. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-

process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In *re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

As to Claims 25 and 26, the system of Feathers/ Olivia teaches a cylinder that may be supported on the body of the harness wearer via the mounting means and retaining means as well as by the retaining means solely. As addressed in the Olivia prior art, the retaining means is an optional feature that may be permanently used for retaining.). (Column 5, Lines 25-45; Column 7, Lines 4-13; and Column 8, Lines 29-34). In the inadvertent failure of the mounting means (the mechanical coupling of the male and female supports), the retaining means would be capable of supporting the cylinder solely for a period of time.

As to Claims 28 and 29, the system of Feathers/ Olivia discloses a harness; yet, the elements of the hip-plate, the connectors, and the manifold have not been discussed. Regarding the hip-plate, the connectors and the manifold, Feathers teaches a hip plate (9) arranged for location on the hip of the wearer for adjusting the fit of the harness (Column 3, Lines 7-10). Regarding the flexible nature of the hip-plate, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hip-plate out of a flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *re Leshin*, 125 USPQ 416. Regarding the connectors, Feathers teaches a first connector (5B) arranged for detachably connecting the cylinder, and a second connector (5A)

arranged for non-detachably connecting the cyclinder. (Column 2, Lines 58-67 and Column 4, Lines 2-10). It should be noted as the connector 5A is threaded thru the belt is not detachable (unless by destroying the belt) while the connector 5B is readily engagable. Regarding the manifold, Feathers teaches a manifold (15) for connecting the breathing gas line (16) of the face mask (19) and an additional supply line (26).

As to Claims 30-34, the system of Feathers/ Olivia discloses a shoulder panel (4); yet, does not expressly disclose the flexible nature of the shoulder panel and the ability of the shoulder panel to be made of foam. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shoulder panel out of a foam, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feathers (4,377,163) in view of Olivia (5,540,368) as applied to claim 21 above, and further in view of Feder (5,267,815).

As to Claim 27, the system of Feathers and Olivia is discussed above. Olivia teaches the retaining means (50) is arranged for retaining an object (60, for example: a cylinder) comprises a strap. Yet, Olivia does not expressly disclose the use of a web, holster or cradle for holding the cylinder. Feder teaches a web (2) attached to the cylinder for enabling the tank to be carried and prevent the slipping of the tank from the cover (2). (Column 5, Lines 55-65, and Column 6, Lines 3-10 and 16-55). Therefore, it

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Feathers and Olivia to include an additional web for holding the cylinder for the purpose of preventing the slippage of the tank from the retaining means.

Response to Arguments

5. Applicant's arguments with respect to claims 21-34 have been considered but are moot in view of the new ground(s) of rejection.

With respect to Applicant's arguments regarding prior art Feathers, Applicant asserts the prior art does not enable the disengagement and engagement during use of the device. Examiner respectfully disagrees. Specifically, Column 4, Lines 30-38 recite the ability for the mounting arrangement to be removed and replaced during use of the device. Nevertheless, as Applicant has further clarified the means plus function language of the claim limitations for both the "mounting means for" and the "retaining means for", Examiner has provided new prior art reference Olivia (5,540,368) to explicitly recite the mounting means structure of a U-bracket and lug, and the retaining means structure of the strap connected to the U bracket.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boucher (4,889,306), Berg (6,367,753), Carson (4,949,889), Rankin et al. (5,421,326), Betto et al. (5,961,476), Swann et al (6,041,778), Weber

(5,970,519), and Kluczynski (6,651,751) discloses additional mounting means for a cylinder.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Annette F Dixon
Examiner
Art Unit 3771

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